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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/733,806

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George S. Avery

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EXAMINER

JUSKA, CHERYL

ART UNIT

PAPER NUMBER

1771

MAIL DATE

DELIVERY MODE

08/07/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/733,806	Applicant(s) AVERY, GEORGE S.	
	Examiner Cheryl Juska	Art Unit 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 August 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 1, 2007, has been entered.

Response to Arguments

2. Applicant's arguments, see sections II and III, pages 6-8 of the Remarks filed August 1, 2007, with respect to the 112, 1st and 2nd rejections, have been fully considered and are persuasive. As such, the 112 rejections set forth in sections 4-7 of the last Office Action (Final Rejection mailed March 1, 2007) have been withdrawn.

3. Applicant's arguments regarding the prior art rejection of the claims have been fully considered but they are not persuasive. Specifically, in view of applicant's own arguments presented against the 112 rejections, with respect to the scope and definiteness of the phrase "substantially horizontal lateral excursions," the prior art rejection is maintained below.

Claim Rejections - 35 USC § 102

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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5. Claims 11, 12, 19, and 20 stand rejected under 35 U.S.C. 102(b) as being anticipated by US 3,940,522 issued to Wessells as set forth in section 9 of the last Office Action.

Applicant has not amended the claims in an attempt to overcome the prior art rejection, but rather merely traverses on the grounds that Wessells teaches away from the presently claimed invention (Remarks, paragraph spanning pages 8-9). Specifically, applicant asserts “Wessells’ fibers are substantially vertical (Figure 4), and the applicant’s fibers are substantially horizontal (Figure 1), and that is a huge distinction that renders claim 11 and its dependent claims both novel and nonobvious when compared to Wessells” (Remarks, page 9, 1st paragraph). The examiner respectfully disagrees.

First, as noted above, applicant has successfully traversed the 112, 1st and 2nd rejections of the phrase “substantially horizontal lateral excursions.” In particular, the phrase is defined by the specification as *merely portions* of fibers 16 identified by the “substantially horizontal” length “x” in Figure 1B, wherein said excursion portions are “substantially horizontal” or parallel to the turf backing. Note applicant’s arguments, 2nd paragraph, page 6.

Applicant recites in claim 11 “pre-stressed first fibers have a non-linear shape with substantially horizontal lateral excursions when not under tension” wherein said first fibers are sewn through a backing and extend upward from said backing to a cut end. In other words, applicant’s claim is limited to the first fibers generally extending upward or vertically from the backing, wherein said first fibers have a non-linear shape so that *portions* of the fiber are excursions that are “substantially horizontal” or substantially parallel to said backing. Based upon this definition of the phrase which is supported by the specification and argued by applicant, the Wessells patent anticipates applicant’s claims 11, 12, 19, and 20.

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6. To reiterate, applicant argues *the fibers* of Wessells are substantially vertical in contrast to the claimed substantially horizontal *fibers*. However, this argument is not commensurate in scope with the claims. The claims require *said fibers to extend upward or vertically* from the backing and to have *portions thereof which extend in a substantially horizontal manner*. Figure 4 of Wessells clearly meets these requirements. Applicant's claims do not exclude substantially vertical *fibers*.

7. Note the differences between applicant's invention and the prior art appear to be merely a matter of degrees. Relative terms cannot serve to patentably distinguish an invention from the prior art. Also, note "The term "substantially" is often used in conjunction with another term to describe a particular characteristic of the claimed invention. It is a broad term. *In re Nehrenberg*, 280 F.2d 161, 126 USPQ 383 (CCPA 1960). In the present case, "substantially horizontal" is a broad term that encompasses angles up to about 45° from the horizontal plane. Therefore, applicant's arguments are found unpersuasive and the above rejection is maintained.

Claim Rejections - 35 USC § 103

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. Claims 13 and 15-17 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Wessells patent in view of US 6,551,689 issued to Prevost as set forth in section 10 of the last Office Action.

Applicant traverses said 103 rejection by re-asserting arguments presented in the last response (December 22, 2006). Hence, the examiner's response is basically reiterated from the last Office Action section 10.

Regarding the rejection of claims over Wessells in view of Prevost, applicant asserts the combination of art "still only suggests fibers that extend upward from the backing in a vertical direction," rather than the present invention of "fibers that extend upward from the backing in a substantially horizontal direction, i.e., the lateral excursions" (Remarks, 3rd paragraph, page 10). However, the scope of applicant's argument is not commensurate in scope with the claims since the claims merely require the non-linear, lateral excursions of the fibers to being substantially horizontal and not necessarily the fibers themselves. Note applicant's traversal of the 112 rejections in sections II and III of the Remarks, pages 6-8. Therefore, the above rejection over Wessells and Prevost is maintained.

10. Claims 14 and 18 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Wessells patent as set forth in section 11 of the last Office Action.

Applicant has presented no new arguments regarding the 103 rejection (Remarks, page 11, 2nd and 3rd paragraphs). As such, said 103 rejection is also maintained.

Conclusion

11. This is a continued examination (RCE) of applicant's earlier Application No. 10/845,858. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though

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it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

12. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

14. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Cheryl Juska/
Primary Examiner, Art Unit 1771

cj
August 7, 2007